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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3382 OF 2003
IN
SUIT NO.1179 OF 2003

Devji Ambabhai Patel ... Plaintiff

V/s.

Chunilal V. Patel & Ors. ... Defendants

Mr.J.S. Kini for Plaintiff
Mr.Abhay Patki for Defendant Nos.1 and 2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 16, 2006**

P.C.:

. The Defendants have taken out this Motion claiming that action be taken against the plaintiffs under Order 39 Rule 2A for having breached the order passed by this Court on 30.6.2003. It is submitted that the plaintiff has caused an intentional breach and disobeyed the order dated 30.6.2003 directing the parties to maintain status quo. The defendants who have taken out this Motion have claimed in the affidavit in support of the Motion that the Plaintiffs have breached the order by carrying out the following works:

(a) Breaking the partitioning wall and amalgamating the balcony with the existing Flat No.22 to increase the size of bed room. The walls of both the bed room of Flat No.22 are broken.

(b) The rear side garage on the ground floor has been converted into commercial premises without any permission.

(c) Existing servants room attached to said rear side garage renovated and extended by

constructing additional walls and doors in order to convert the same into an office premises.

2. Photographs are annexed to the affidavit in order to substantiate the claim made by the defendants.

3. On the other hand, the plaintiff claims that these alterations to the premises had been made in January 2003. In respect of the conversion of the garage at the rear into commercial premises, it is stated that this conversion had taken place years ago. The learned Advocate appearing for the plaintiff produced the electricity bill for the month of August 2002 and the telephone bill for the month of April 2002 which indicate that the premises were being used for commercial purposes.

4. As regards the allegation that the existing servants room has been renovated by constructing additional walls in order to convert the same into office premises, the plaintiff has denied the same and has stated that there is no servant’s room at all.

5. A further allegation has been made that the plaintiff is exclusively using the terrace of the building and not permitting others to use the same. This fact has been denied by the plaintiff by contending in his affidavit that the terrace was always in his possession exclusively since he occupies the terrace flat. In these circumstances, it is the case of the

plaintiff that he has not violated any order of this Court much less the order dated 30.6.2003.

6. Heard advocates.

7. In my view, there is no material on record to indicate the condition of the suit premises on 30.6.2003 when the order allegedly breached was passed. Therefore, it is not possible to accept the claim made by the defendant that the plaintiff has made any alterations in breach of the order dated 30.6.2003. The photographs annexed do not bear any date so as to indicate that they were shot prior to the order directing the parties to maintain status quo. On the other hand, the bills produced indicate that the garage premises were in fact used as commercial premises prior to the order.

8. Hence, the relief claimed by way of this Motion need not be granted. Motion is accordingly dismissed.